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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 UNITED STATES OF AMERICA,

Case No. 3:18-cr-00099-LRH-CLB

10 Plaintiff,

ORDER

11 v.

12 DAVID RAMON COVARRUBIAS,

13 Defendant.
14

15 Before the Court is Defendant Covarrubias' ("Covarrubias") motion to dismiss with
16 prejudice (ECF No. 145). The Government responded (ECF No. 152), and Covarrubias replied
17 (ECF No. 153). For the reasons contained within this Order, the Court will deny the motion.

18 **I. BACKGROUND**

19 Following a non-unanimous verdict, the Court declared a mistrial for Covarrubias. ECF
20 No. 132. Subsequently, Covarrubias filed a motion to reopen detention, and the Court ordered his
21 release from custody pending a second trial. ECF Nos. 139, 142. Nevertheless, Covarrubias
22 remained in the custody of ICE because of a reinstated order of deportation/removal.¹

23 Both parties contest the substance of the post-trial interactions between ICE and
24 Covarrubias. The Government amounts these interactions to routine administrative proceedings,
25

26 ¹ The issue of release and the Bail Reform Act is moot. Covarrubias has been released and is now monitored with a
27 GPS ankle monitor by both ICE and Pretrial Services pending a second trial. *See U.S. v. Trujillo-Alvarez*, 900 F. Supp.
28 2d 1167 (D. Or. 2012) (finding that the Government has two options under the Bail Reform Act: release defendant
pending trial or abandon criminal prosecution and proceed directly with removal). *But see U.S. v. Zarate*, 2:19-cr-
00152-JAD-NJK, ECF No. 61 (D. Nev. Oct. 11, 2019) (noting that other circuits have held release under the Bail
Reform Act does not preclude immigration detention).

1 (“A-file”). While certainly there exists coordination between the U.S. Attorney’s Office and ICE
 2 on certain matters, no ICE officials involved in Covarrubias’ criminal case were involved in these
 3 administrative proceedings. Notably, ICE quickly halted the removal proceedings after it was
 4 found that Covarrubias’ release from ICE custody was necessary “to facilitate the continued
 5 prosecution of the pending 8 U.S.C. 1326 criminal case.” ECF No. 153, at 10. So here, unlike in
 6 the cases cited by Covarrubias, ICE clearly surrendered pursuing deportation, and passed the baton
 7 to the U.S. Attorney’s Office. *See United States v. Castro-Guzman*, 2020 WL 3130395 (D. Ariz.
 8 May 11, 2020) (finding that since the defendant had already been removed from the United States,
 9 any further prosecution was improper); *Trujillo-Alvarez*, 900 F. Supp. 2d 1167 (finding that
 10 defendant’s rights were violated when both ICE and the Government pursued both deportation and
 11 criminal prosecution simultaneously); *United States v. Laurean-Lozoya*, 2018 WL 5924181 (Nov.
 12 13, 2018) (finding that since defendant had been removed from the United States while a criminal
 13 action was pending, dismissal was necessary under the court’s supervisory powers).

14 Still, if any new or additional information regarding Covarrubias’ immigration status was
 15 discovered through these early stages of removal proceedings, and the Government attempts to
 16 introduce it at trial, the Defense is well within their right to seek its exclusion.

17 Accordingly, because ICE’s interaction with Covarrubias does not “violate the universal
 18 sense of justice,” the Court will deny Covarrubias’ motion to dismiss with prejudice. *Barrera-*
 19 *Moreno*, 951 F.2d at 1092 (citation omitted).

20 IV. CONCLUSION

21 IT IS THEREFORE ORDERED that Defendant’s motion to dismiss with prejudice (ECF
 22 No. 145) is **DENIED**.

23
 24 IT IS SO ORDERED.

25 DATED this 18th day of November, 2020.

26 
 27 LARRY R. HICKS
 28 UNITED STATES DISTRICT JUDGE